

## § 1201.11

to engage in electronic mail filing pursuant to this section shall be deemed to be signed for purposes of any regulation in part 1201, 1203, 1208, or 1209 of this title that requires a signature. An electronically filed document shall constitute a declaration made under penalty of perjury if it contains the statement required by 28 U.S.C. 1746, as set forth in Appendix IV of this part.

(o) *Authority of a judge or the Clerk of the Board to require signed submissions.* A judge or the Clerk of the Board may require that any document filed electronically be submitted in non-electronic form and bear the written signature of the submitter. A party receiving such an order from a judge or the Clerk of the Board shall, within 5 calendar days, serve on the judge or Clerk of the Board by regular mail, by facsimile, or by commercial or personal delivery a signed non-electronic copy of the document.

[68 FR 59860, Oct. 20, 2003]

### Subpart B—Procedures for Appellate Cases

#### GENERAL

#### § 1201.11 Scope and policy.

The regulations in this subpart apply to Board appellate proceedings except as otherwise provided in § 1201.13. The regulations in this subpart apply also to appellate proceedings and stay requests covered by part 1209 unless other specific provisions are made in that part. These regulations also apply to original jurisdiction proceedings of the Board except as otherwise provided in subpart D. It is the Board's policy that these rules will be applied in a manner that expedites the processing of each case, with due regard to the rights of all parties.

#### § 1201.12 Revocation, amendment, or waiver of rules.

The Board may revoke, amend, or waive any of these regulations. A judge may, for good cause shown, waive a Board regulation unless a statute requires application of the regulation. The judge must give notice of the waiver to all parties, but is not required to give the parties an opportunity to respond.

## 5 CFR Ch. II (1–1–04 Edition)

#### § 1201.13 Appeals by Board employees.

Appeals by Board employees will be filed with the Clerk of the Board and will be assigned to an administrative law judge for adjudication under this subchapter. The Board's policy is to insulate the adjudication of its own employees' appeals from agency involvement as much as possible. Accordingly, the Board will not disturb initial decisions in those cases unless the party shows that there has been harmful procedural irregularity in the proceedings before the administrative law judge or a clear error of law. In addition, the Board, as a matter of policy, will not rule on any interlocutory appeals or motions to disqualify the administrative law judge assigned to those cases until the initial decision has been issued.

#### APPEAL OF AGENCY ACTION; PLEADINGS

#### § 1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following:

(a) Notice of the time limits for appealing to the Board, the requirements of § 1201.22(c), and the address of the appropriate Board office for filing the appeal;

(b) A copy, or access to a copy, of the Board's regulations;

(c) A copy of the appeal form in appendix I of this part; and

(d) Notice of any right the employee has to file a grievance, including:

(1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;

(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board; and

(3) Whether there is any right to request Board review of a final decision

## Merit Systems Protection Board

## § 1201.24

on a grievance in accordance with § 1201.154(d).

[54 FR 53504, Dec. 29, 1989, as amended at 65 FR 25624, May 3, 2000]

### § 1201.22 Filing an appeal and responses to appeals.

(a) *Place of filing.* Appeals, and responses to those appeals, must be filed with the appropriate Board regional or field office. See § 1201.4(d) of this part.

(b) *Time of filing.* (1) Except as provided in paragraph (b)(2) of this section, an appeal must be filed no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of receipt of the agency's decision, whichever is later. Where an appellant and an agency mutually agree in writing to attempt to resolve their dispute through an alternative dispute resolution process prior to the timely filing of an appeal, however, the time limit for filing the appeal is extended by an additional 30 days—for a total of 60 days. A response to an appeal must be filed within 20 days of the date of the Board's acknowledgment order. The time for filing a submission under this section is computed in accordance with § 1201.23 of this part.

(2) The time limit prescribed by paragraph (b)(1) for filing an appeal does not apply where a law or regulation establishes a different time limit or where there is no applicable time limit. No time limit applies to appeals under the Uniformed Services Employment and Reemployment Rights Act (Public Law 103-353), as amended; see part 1208 of this title. See part 1208 of this title for the statutory filing time limits applicable to appeals under the Veterans Employment Opportunities Act (Public Law 105-339). See part 1209 of this title for the statutory filing time limits applicable to whistleblower appeals and stay requests.

(c) *Timeliness of appeals.* If a party does not submit an appeal within the time set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown. The judge will provide the party an opportunity to show why the appeal should not be dismissed as untimely.

(d) *Method of filing an appeal.* Filing of an appeal must be made with the appropriate Board office by personal or commercial delivery, by facsimile, by mail, or by the Internet filing option described in paragraph (e) of this section.

(e) *Internet filing option.* An appeal may be filed electronically by using the electronic filing option available at the Board's Web site (<http://www.mspb.gov/e-appeal.html>).

(f) *Filing a response.* Filing of a response must be made with the appropriate Board office by personal or commercial delivery, by facsimile, by mail, or by electronic mail as specified in § 1201.5 of this part.

[54 FR 53504, Dec. 29, 1989, as amended at 58 FR 36345, July 7, 1993; 59 FR 31109, June 17, 1994; 59 FR 65235, Dec. 19, 1994; 62 FR 59992, Nov. 6, 1997; 62 FR 66814, Dec. 22, 1997; 64 FR 27899, May 24, 1999; 64 FR 54508, Oct. 7, 1999; 65 FR 5409, Feb. 4, 2000; 68 FR 59862, Oct. 20, 2003]

### § 1201.23 Computation of time.

In computing the number of days allowed for filing a submission, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

*Example:* If an employee receives a decision notice that is effective on July 1, the 30-day period for filing an appeal starts to run on July 2. The filing ordinarily would be timely only if it is made by July 31. If July 31 is a Saturday, however, the last day for filing would be Monday, August 2.

[54 FR 53504, Dec. 29, 1989, as amended at 59 FR 31109, June 17, 1994]

### § 1201.24 Content of an appeal; right to hearing.

(a) *Content.* Only an appellant, his or her designated representative, or a party properly substituted under § 1201.35 may file an appeal. Appeals may be in any format, including letter form. Electronic appeals must be filed using the Board's Internet filing option. All appeals must contain the following:

(1) The name, address, and telephone number of the appellant, and the name